



It's the Law

DoD Maintenance

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Agenda

- ♦ Overview
- ♦ Depot Maintenance Defined
- ♦ Core Logistics
- ♦ 50/50
- ♦ Public-Private Partnering
- ♦ \$3 Million Rule
- ♦ Minimum Capital Investments
- ♦ Prohibition on Management by End Strength
- ♦ Other Sales and Leasing Authorities

Overview

10 USC Chapter 146



- ♦ Provide an efficient, ready and controlled source...necessary to ensure effective and timely response to a mobilization national defense contingency situations, and other emergency requirements
- ♦ Ensure viability of government depots through reinvestment in infrastructure, equipment, and process
- ♦ Protect a strong national industrial base

Definition of Depot-Level Maintenance and Repair



- ♦ 10 USC 2460
- ♦ Depot-level maintenance and repair
 - Any action performed on materiel or software in the conduct of inspection, repair, overhaul, or the modification or rebuild of end-items, assemblies, subassemblies, and parts, that—
 - Requires extensive industrial facilities, specialized tools and equipment, or uniquely experienced and trained personnel ...not available in lower echelon-level maintenance activities
 - Independent of any location or funding source - may be performed in the public or private sectors (includes ICS/CLS arrangements)
- ♦ Includes
 - Fabrication of parts, testing, and reclamation, as necessary
 - Repair, adaptive modifications or upgrades, change events made to operational software, integration and testing; and
 - In the case of either hardware or software modifications or upgrades, the labor associated with the application of the modification.

Core Depot-Level Maintenance and Repair Capabilities



- ♦ 10 USC 2464
- ♦ Department of Defense maintain a core depot-level maintenance and repair capability that is:
 - Government-owned and Government-operated (including Government personnel and Government-owned and Government operated equipment and facilities)
- ♦ Ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, other emergency requirements
- ♦ The Secretary of Defense shall assign sufficient workload to ensure efficiency and technical competence
- ♦ Capability must be established within four years of IOC, or fielding
- ♦ Commercial items excepted following congressional notification
- ♦ SECDEF waivers possible for:
 - Equipment that is not an enduring requirement of the national defense strategy
 - Special Access Programs
 - Nuclear Aircraft Carriers
- ♦ Congressional reporting required



Major Defense Acquisition Programs: Certification Required Before Milestone A Approval

- ♦ 10 USC 2366a
- ♦ A major defense acquisition program may not receive Milestone A approval...until Milestone Decision Authority certifies
 - A determination of applicability of core depot-level maintenance and repair capabilities requirements has been made



Major Defense Acquisition Programs: Certification Required Before Milestone B Approval

- ♦ 10 USC 2366b
- ♦ A major defense acquisition program may not receive Milestone B approval...until Milestone Decision Authority certifies:
 - an estimate has been made of the requirements for core depot-level maintenance and repair capabilities, as well as the associated logistics capabilities and the associated sustaining workloads required to support such requirements
- ♦ Requirements for Low-Rate Initial Production
 - The Secretary of Defense shall ensure that the detailed requirements for core depot-level maintenance and repair capabilities, as well as the associated logistics capabilities and the associated sustaining workloads required to support such requirements, have been defined.

Limitation on Performance of Depot-level Maintenance of Materiel (aka 50/50)



- ♦ 10 USC 2466
- ♦ Establishes the 50 percent limit on contracting for depot maintenance by a Military Department or Defense Agency
- ♦ Requires annual reporting to the Congress
- ♦ Allows waiver by SECDEF based on reasons of national security (may not be delegated)
- ♦ Definition of depot-level maintenance basically defines what is included and what is excluded



Fundamental Rules of 50/50 Accounting

- ♦ Reported by the Military Department, Agency or other activity receiving the original appropriation
 - Interservice work is reported by the Principal, not the Service performing or contracting for the work
- ♦ Contract CLIN or government production system determines contract or organic
- ♦ It is the nature of the work as defined by 10 USC 2460, not the appropriation type, or location that governs
- ♦ All factors of production are included: labor, material, parts, indirect & overhead
- ♦ Not included in calculations are:
 - Procurement of modifications and upgrades
 - Nuclear refueling of aircraft carriers (if waived by SECDEF)
 - Remanufacturing when chassis, airframes and other major assemblies are utilized in new production



CITE & Partnerships

- ♦ 10 USC 2474
- ♦ Service Secretaries required to designate each depot activity or military arsenal as CITE in their core competencies
- ♦ CITE-enabled partnerships allow...
 - Employees of Center, private industry, and others to perform work related to core competencies
 - Private industry and others to use facilities or equipment of the Center that are not fully utilized
- ♦ Private sector use of excess equipment
 - There must be no adverse impact on readiness
 - Must reimburse direct and indirect costs
 - “Hold harmless” provisions apply in case of war or national emergency
- ♦ Accounting for partnering compensation
 - Consideration, e.g., rental payments or other forms of consideration, may be accepted for use of property
 - Funds received by the government are credited to the appropriation or working capital fund that incurs the cost



Partnering Exemption to 50/50 Accounting

- ♦ 10 USC 2474 creates exemption to 50 percent limitation on contracting for depot maintenance
- ♦ Work performed at a Center of Industrial and Technical Excellence (CITE) by a contractor as part of a partnership is not counted towards the 50 percent limitation
- ♦ Partnering exceptions are reported separately in the Congressional reports to include the value and nature



Partnering Provisions

- ♦ 10 USC 2474: CITEs and Partnering
- ♦ 10 USC 2563: Sales of Articles & Services
- ♦ 10 USC 2208(j): Sales of Mfg, Re-mfg and Eng Services
- ♦ 10 USC 2667: Leasing of Non-Excess Real or Personal Property
- ♦ Federal Acquisition Regulation (FAR)

Requirement for Competition

“The \$3 Million Rule”



- ♦ 10 USC 2469
- ♦ Cannot change location of performance for workloads at DoD depots valued at \$3M or greater (including labor & materials) unless-
 - Merit based selection procedures for competitions among DoD depots
 - Competitive procedures for competition among public and private sector entities
- ♦ OMB Circular A-76 does not apply
- ♦ Waiver for work performed on a CITE for 10 USC 2474 partnership.

Minimum Capital Investment for Certain Depots



- ♦ 10 USC 2476
- ♦ Military Departments must make annual 6% capital investments.
 - includes investment funds spent on depot infrastructure, equipment, and process improvement
 - applies to all major depots and arsenals
- ♦ SECDEF
 - shall submit an annual report containing budget justification documents summarizing the level of capital investment for each military department
 - may waive the 6% requirement for national security reasons – must notify Congress
- ♦ Annual report must include:
 - any statutory, regulatory, or operational impediments to achieving the 6% requirement
 - benchmarks for capital investment established for each covered depot and military department and
 - the relationship of the benchmarks to applicable performance measurement methods used in the private sector

Prohibition on Management by End Strength



- ♦ 10 USC 2472
- ♦ Civilian employees of the DoD who perform depot-level maintenance & repair workloads
 - May not be managed on any constraint or limitation in terms of
 - Man Years
 - End Strength
 - Full Time Equivalent Positions
 - Maximum Number of Employees
- ♦ Shall be managed solely on the basis of available workload and funds made available



Other Sales Authorities

- ♦ 10 USC 2539b – Services for testing of materials, equipment, models, computer software and other items
- ♦ 10 USC 7300 – Naval shipyard sales of articles or services to private shipyards for fulfillment of contracts for nuclear ships
- ♦ 22 USC 2754 – Sales or lease of articles or services to friendly countries under certain conditions
- ♦ 22 USC 2770 – Sales of articles and services to US companies for incorporation in end items to be sold to a friendly country or international organization under certain conditions
- ♦ 10 USC 4543 - Sales of Mfg Articles and Services by Army Arsenal
- ♦ 10 USC 4544 - Army industrial facilities: cooperative activities with non-Army entities
- ♦ 10 USC 2563 - Sales of Articles & Services
- ♦ 10 USC 2208(j) - Sales of Manufactured, Re-manufactured Articles and Engineering Services
- ♦ 10 USC 2667 - Leasing of Non Excess Real or Personal Property



Web Resources

**For additional information
regarding maintenance policy subjects:**

<http://www.acq.osd.mil/log/mpp/index.html>

**For additional training
on maintenance policy subjects:**

<https://learn.test.dau.mil/html/clc/Clc.jsp?cl=>